

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 346

November 2, 1999, 4:54 p.m.
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OMNIBUS TRADE BILL/Africa Transshipments

SUBJECT: African Growth and Opportunity Act . . . H.R. 434. Roth motion to table the Feingold amendment No. 2428 to the Roth/Moynihan substitute amendment No. 2325.

ACTION: MOTION TO TABLE AGREED TO, 53-44

SYNOPSIS: As introduced, H.R. 434, the African Growth and Opportunity Act, will expand trade with the 48 Sub-Saharan African (SSA) nations by making qualifying SSA nations eligible for enhanced benefits under the Generalized System of Preferences (GSP) program, by giving qualifying SSA nations duty-free and quota-free access to the United States for certain apparel products, by creating a Trade and Economic Cooperation Forum between the United States and SSA countries, and by directing the President to begin plans for implementing a United States-SSA free trade area.

The Roth/Moynihan substitute amendment would enact the Trade and Development Act. The substitute: would include provisions similar to the House provisions to expand trade with SSA countries; would reauthorize the expired GSP program, which grants the President the authority to provide duty-free treatment to imports of eligible articles from designated countries; would reauthorize the expired Trade Adjustment Assistance (TAA) programs, which provide assistance to workers adversely affected by import competition; and would enact the United States-Caribbean Basin Trade Enhancement Act, which would expand the Caribbean Basin Initiative (CBI) by providing additional tariff preferences on a number of products not previously covered.

The Feingold amendment would amend the section on illegal transshipments of textile products from Africa. (A "transshipment is when a country that faces high trade barriers with the United States routes its products to the United States through a country with low trade barriers and falsely presents those products as having been made in that second country in order to take advantage of its low barriers.) The Feingold amendment would require importers to provide, for all textile imports from Africa, the name and address of the manufacturer or producer of the goods, the names and address of any subcontractors, and any other information the Customs Service might require. It would also require the importer to exercise and certify that it took "reasonable care" to ascertain the true country of origin of imported textile goods from Africa, and would have to certify that such goods did not violate applicable trademark, copyright, and patent laws. The amendment would make both the importer of record and the final retail seller of the

(See other side)

YEAS (53)			NAYS (44)			NOT VOTING (2)	
Republicans (41 or 79%)	Democrats (12 or 27%)		Republicans (11 or 21%)	Democrats (33 or 73%)		Republicans (2)	Democrats (0)
Abraham	Hatch	Baucus	Bunning	Akaka	Kennedy	Gregg- ²	
Allard	Hutchinson	Bayh	Campbell	Biden	Kerry	McCain- ²	
Ashcroft	Jeffords	Breaux	Collins	Bingaman	Kohl		
Bennett	Kyl	Daschle	Helms	Boxer	Landrieu		
Bond	Lott	Feinstein	Hutchison	Bryan	Lautenberg		
Brownback	Lugar	Graham	Inhofe	Byrd	Leahy		
Burns	Mack	Kerrey	Sessions	Cleland	Levin		
Cochran	McConnell	Lieberman	Smith, Bob	Conrad	Mikulski		
Coverdell	Murkowski	Lincoln	Snowe	Dodd	Reed		
Craig	Nickles	Moynihan	Specter	Dorgan	Reid		
Crapo	Roberts	Murray	Thurmond	Durbin	Robb		
DeWine	Roth	Wyden		Edwards	Rockefeller		
Domenici	Santorum			Feingold	Sarbanes		
Enzi	Shelby			Harkin	Schumer		
Fitzgerald	Smith, Gordon			Hollings	Torricelli		
Frist	Stevens			Inouye	Wellstone		
Gorton	Thomas			Johnson			
Gramm	Thompson						
Grams	Voinovich						
Grassley	Warner						
Hagel							

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

merchandise jointly liable for any material false statement, act, or omission made with the intent or effect of circumventing any applicable quota or tariff. The Customs Service would be required to seek a penalty against any importer or retailer if it determined there was a "substantial likelihood" that a violation occurred; if an importer or retailer failed to cooperate with an investigation, the Customs Service would "base its determination on the best available information." The penalty for a first violation for an importer or retailer would be the forfeiture of the merchandise and a fine equal to twice the value of the merchandise; for a second offense, the merchandise would be forfeited and a fine of four times the value of the merchandise would be imposed, and a criminal penalty of up to a \$100,000 fine and a year in prison could be imposed; and for a third or subsequent offense, the merchandise would be forfeited and a criminal penalty of up to \$1 million and 5 years in prison could be imposed. SSA countries would be required to have "adequate measures" to prevent textile transshipments, and to cooperate fully with any United States efforts to address and prevent transshipments. The President would be required to impose quotas or tariffs on an SSA country that did not comply. Finally, the Feingold amendment would create a private right of action in civil court to sue businesses for equitable relief of three times the damage incurred from a transshipment or transshipments from an SSA country.

Debate was limited by unanimous consent. After debate, Senator Roth moved to table the Feingold amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

This amendment would impose new transshipment requirements on importers and retailers and would threaten any importer or retailer of textiles from Africa with massive fines and jail terms for any violation, however minor, of those violations. These transshipment rules would not apply to any goods except textiles, and they would only apply to imports from African nations. For instance, a retailer could be fined up to \$1 million and imprisoned for 5 years if the Customs Service decided that he or she failed (intentionally or not) to provide it with information that had the "effect" of evading a quota or tariff. The Customs Service would decide if a retailer exercised "reasonable care" in making sure that a product imported from an African country was really made in that country; if it failed to get information from an importer or retailer, the Customs Service would just decide using the "best available information." It would be required to seek penalties any time it decided that there was a "substantial likelihood" that a violation had occurred. Thus, under this amendment, an administrative agency could end up throwing an importer in jail for up to 5 years just for making a mistake in filling out one of many complex import forms that must be filed, or could even throw an importer in jail if it found that he or she had filed every bit of paperwork correctly but had failed to exercise "reasonable care" to make sure the information he or she had been given by the exporter was correct. Never mind ordinary constitutional due process rights; if the Customs Service could not get the information ordinarily needed to establish guilt beyond a reasonable doubt, it would just make a decision based on the best available evidence. Under the terms of this amendment, we doubt very much that most businesses would be willing to invest in, or buy from, Africa. This amendment, therefore, is not about stopping transshipments from Africa; it is about stopping trade with Africa. When we passed the CBI to allow textile trade with Caribbean Basin nations, huge domestic textile industries began in those nations. The same will happen with Africa, as long as we reject this amendment.

Those opposing the motion to table contended:

The Feingold amendment would make certain that the trade that this bill seeks to promote with African nations will benefit African nations rather than other countries. The danger is that other countries may try to transship their products through Africa. For instance, China, which faces high trade barriers on textiles with the United States, may send its textile products to Africa in an effort to make it appear as though they are from Africa and then reexport to the United States those supposedly African products under the more favorable tariff treatment that this bill will provide. The Customs Service estimates that \$2 billion worth of textiles are already transshipped illegally and that every \$1 billion in such illegal trade costs 40,000 American textile workers their jobs. Once the Africa trade bill before us drops tariffs for African textile products, many countries will rush to take illegal advantage of the situation. China is open about its goals—its Foreign Trade web site states that China may go so far as to set up assembly plants with Chinese workers in Africa, which would enable it to "circumvent quotas imposed on commodities of Chinese origin by European and American countries." Current transshipment laws for textiles are ineffective. They require foreign officials to issue country-of-origin visas for textile shipments to the United States. However, many corrupt foreign officials are only too willing to sell visas to the highest bidders. The Feingold amendment would improve this system by demanding some accountability from importers. They would be required to certify the country of origin for the textiles they imported. They would be held liable for any false statements they made and for any information they withheld. Joint liability would apply, and a guilty party, for a first offense, would forfeit the shipment and be fined twice its value. The suggestion has been made that this amendment is unconstitutional because its due process protections are too weak, given the supposed severity of its punishments. We disagree. A first-time offender would only face civil penalties; for a second-offense, no more than 1 year in jail could be ordered; for a third offense, no more than a 5-year sentence would apply. Further, the particular due process complaint that our colleagues have raised, that the Customs Service could impose a penalty based on the "best information available," only would apply when an importer or retailer was not forthcoming when information on a shipment was sought. This amendment is reasonable. We urge our colleagues to support it.